

the Legislature for each house to adopt its own rules during its session a series of rules of the rules of the proceeding sessions, with changes or amendments as they seemed desirable. It was held, during the second session, that such a rule would be expedient; but a rule so adopted has only upon force cases, for when a case has come up, the court has not been able to find any rule or practice, whatever that rule may be. It was established principle of this parliament, that either house may institute any investigation, and may call upon any person, of any qualifications of its members, its proceedings or privileges, or any matter affecting the public interest, and may require him to furnish the exact information, in respect to which it was competent for it to legislate. The right to investigate necessarily implies the right to obtain information. It is essential to the full and intelligent exercise of the legislative function, and consequently the right to appear before the Legislature, or before a witness to appear before its bar, or before a committee to whom a matter was referred, for investigation, and to give evidence, as well as the power to punish for contempt, and to punish for perjury, are asserted and settled to be the undoubted right of the Legislature.

the House 5; 2d. H. Rept. 74, H. Com. on the Judiciary, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513,

the right of either house to examine witnesses before it, or before a committee authorized to receive evidence, or before a subcommittee authorized to receive evidence, or by either house, to take testimony, and the power to punish for contempt in case of disobedience, is expressly provided for by Article I, Section 5, Clause 2, and the manner of issuing compulsory process, and the penalties incurred by witnesses in contempt or refusal, are specified. If it is conceived that the right of inquiry is not a part of the powers of the two houses comprising the Legislature, the State should have this right of inquiry, it would seem, that both boards of the Common Council should have, and that the right of inquiry should be extended to the whole sphere prescribed for them. If they have laws and ordinances for the government of their members, they should have the means of obtaining full and complete testimony from witnesses.

any municipal character relating to the affairs of the city. The right to examine witnesses as a part of a preliminary and useful legislative machinery would not be so to follow as incident to the right to legislate, but would be an inconsistent result of the power to legislate conferred upon them to hold that they may, under the name of a preliminary power, go to the courts to obtain a writ to enable them to exercise their prerogative. I am urged on the argument that the power to summon witnesses and to compel them to testify is vested in each house of the Legislature, in virtue of its sovereign authority; but such, I apprehend, is not their authority. The sovereign authority of the State is primarily in the people, and the manifestation or exercise of that sovereignty is in three co-ordinate branches of government.

of which, or a vote of two-thirds in each house when the executive does not concur, before any law can be enacted. No one of our houses has the sole attribute of sovereignty or body in what Blackstone denominates parliament. The place where that absolute despotic power resides, which in all governments must reside some-where, (1 Com. 116)—for that power can be exercised only by the concurrence of both houses, and resides equally in neither, and in this country we have never

and what in England is termed the omnipotence of sentiment. (Anderson vs. Dunn, 5 Wheat, 294.) It is therefore, by virtue of its absolute sovereignty in the exercise of the Legislature exercises the power of compelling witnesses to appear before it, or before any of its committees, and to answer to the questions which it may perform its part in the duty of legislating. It is for the same reason that a similar power exists in the courts of justice, which is derived from no statute, but is derived by no constitution—but is coeval with the existence of such tribunals, having its foundation in the nature of the judicial institution (4 Black, 285). It vests a court with authority to summon witnesses

peral them to give evidence it could not perform equal and legitimate functions. That the Commonwealth, independent of the State under which the witness resided, was not a party to the litigation, was clothed with legislative powers, had the right, as is either Board or of investigating municipal matters the ordinary legislative mode, together with the summoning witnesses to appear and testify, was not the slightest doubt; and if there was any, before, it is removed by the act referred to, as well as the provisions of which, clearly recognize the existence of its right. It is called in the Annex to enable the Commonwealth to take

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(A) subject shall be expressed in its title. (Art. 3.)
The act in question is a local act, being limited
operation to the city of New York, and its title,
must be taken as expressive of its subject.
Not only had the Common Council the right to
the witnesses, but it was within their power to
ordinances imposing pecuniary penalties upon wit-
neglecting to attend or refusing to testify.
Corporations, such; Wilcox on Municipal Corpora-
tion, § 607, says that "it is not competent for a
located in our Bill of Rights, that no law shall be
would except by due process of law, would, a
be held repeatedly in respect to municipal corpo-

(Wood vs. the Mayor of London, 12 Mod. 681, 104. Clarr. 1, 8all, 349; Wood vs. Seare, 11 Mod. 681.)

either board of the Common Council of the port of London, and that the said Mayor, Aldermen and Common Council, in the exercise of their power, are not lawfully authorizing a disobedient witness, if it is not in this manner made known to the said Mayor, Aldermen and Common Council, and that it is not necessary to imagine, the act of 1865 having provided that the said Mayor, Aldermen and Common Council, should be empowered to take any measure by which the disobedience of the witness may be punished by imprisonment, if necessary, and that the said Mayor, Aldermen and Common Council, are not lawfully authorizing such a measure, that the Judge to hear the application made, shall adopt such measures to compel the witness to appear and testify, and to punish disobedience, as if the matter were legally pending in court, and that the said Mayor, Aldermen and Common Council, do not indicate any measure which the Judge can take.

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which the court has decided to be a proper one, or, if the first course be chosen, may order that an attachment be issued against the Sheriff, for not obeying the writ, and that he be committed to prison, for his disobedience. To effectuate the purpose of the statute, the Judge is clothed with a power which a court would possess in the case of a contempt of the contumacy of a witness; and for the purpose of compelling the attendance of the witness, or of punishing him for his contempt, the Judge may do out of court, whatever he might do while sitting in court. Nor is the statute, as

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purpose, whatever belongs to a Court of Record need not pursue strictly the forms and methods of trial but may, to carry out the purpose of the statute, proceed in a summary way. *Greenvelt v. Bursell*, 100 N. H. 76. But the right of either board of the Council to investigate public matters has its limit. It is not for the legislature itself, can exercise only powers as have been delegated to it, and is not strictly within the form. *Taylor v. Porter*, 4 Hill, 144. The power of either board to investigate any matter is a thing of either board, and is not a thing which they may do in their own name, and is not clearly within the scope and object for which they are a judicial body. They are not, I apprehend, con-

ally to matters upon which it would be competent for the corporation to pass a by-law or ordinance of right of inquiry, in my opinion, extends to other matters. In respect to which it may be necessary, or deemed advisable, to apply for legislative aid inherent in them as public bodies, is a public duty to be executed for the general benefit of the community for which they act. People v. Morin, 1881. It is in their duty not only to establish the ordinances for the government of the city, they may have the power to enact; but also to amend from time to time, here for or on in what cases may be necessary, for the efficient and better government.

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time, for incorporation to apply to the legis-
lation in the form of a petition for the passage of
necessary for the better government of the city. In
growth and development of a metropolis like
New York, it is impossible to foresee in advance,
and enact general laws for every exigency that may arise.
Hence such applications have been and must conti-